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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DAN BRANDON BILZERIAN, an individual,

Plaintiff,

v.

IGNITE INTERNATIONAL BRANDS, LTD., a
foreign corporation; IGNITE INTERNATIONAL,
LTD., a foreign corporation; PAUL BILZERIAN,
an individual; SCOTT ROHLER, an
individual; RUPY DHADWAR, an individual,

Defendants.

Case No. 2:24-cv-2101-RFB-NJK

**IGNITE INTERNATIONAL BRANDS,
LTD.'S MOTION TO DISMISS**

Defendant Ignite International Brands, Ltd., a company incorporated in British Columbia, Canada (“Ignite Brands”)¹, through its counsel, Garman Turner Gordon, hereby moves to dismiss Plaintiff Dan Brandon Bilzerian’s (“Plaintiff”) claims against it. This Motion is made pursuant to Federal Rule of Civil Procedure 12(b), subsections (2), (3), and (6), and supported by the following Memorandum of Points and Authorities, the Declaration of Rupy Dhadwar (“Rupy Dhadwar Decl.”) and supporting exhibits attached hereto, the papers and pleadings on file herein, matters subject to judicial notice, and any argument the Court permits.

¹ Ignite International Brands, Ltd. has at times elsewhere in this action been referred to as “Ignite International” to contrast it with Ignite International, Ltd., referred to as “Ignite US.” Given that “International” appears in both names, however, this Canadian defendant chooses to refer to itself in this motion as “Ignite Brands,” so as to avoid confusion.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court does not have personal jurisdiction over Ignite Brands, a Canadian company. The Court’s exercise of jurisdiction over Ignite Brands would fail to comport with federal due process, because Ignite Brands, a nonresident, lacks sufficient minimum contacts with Nevada for the Court to exercise jurisdiction over it without offending traditional notions of fair play and substantial justice.

Moreover, even if personal jurisdiction could somehow be exercised over Ignite Brands, Nevada does not provide the proper venue for Plaintiff’s claims. The Nevada District is not only the improper venue, but it is also an inconvenient one such that dismissal is warranted under the doctrine of *forum non conveniens*. Plaintiff expressly references proceedings now pending in Canada (the “Canadian Proceedings”), but he omits from his Complaint the fact that *he* initiated the Canadian Proceedings against Ignite Brands and several of the other individual defendants.² Plaintiff’s claims in the Canadian Proceedings arise from the same transactions and occurrences as the instant action. On these facts, the Court should dismiss Plaintiff’s complaint in favor of resolution in Canada.

Finally, if the Court allows Plaintiff’s complaint to proceed in this district – which it should not – it must dismiss the causes of action against Ignite Brands under Rule 12(b)(6), because it fails to allege claims upon which relief can be granted. The claims averred are impermissibly vague and fatally defective. Among other things, Plaintiff’s use of group-pleading makes it impossible to determine what, if any, conduct is attributed to Ignite Brands, and he also fails to aver any specific property allegedly protected by the Lanham Act or by copyright. Therefore, the Court can and should dismiss Plaintiff’s complaint, pursuant to Rule 12(b)(6) if it reaches the issue.

² (See, e.g., Petition to the Supreme Court of British Columbia, Vancouver Registry Case No. S-244508, attached as **Exhibit 1**; Amended Petition to the Supreme Court of British Columbia, Vancouver Registry Case No. S-244508, attached as **Exhibit 2**; Petition to the Supreme Court of British Columbia, Vancouver Registry Case No. S-245663, attached as **Exhibit 3**; Amended Petition to the Supreme Court of British Columbia, Vancouver Registry Case No. S-245663, attached as **Exhibit 4**. See also, **Exhibit 5**: Dan Brandon Bilzerian’s Second Affidavit in Vancouver Registry No. S-245663, dated October 17, 2024.) All exhibits hereto are identified as true and correct copies in the supporting Rupy Dhadwar Declaration.

1 II.

2 **BACKGROUND**

3 **A. The Parties are Embroiled in a Legal Dispute in Canada Arising from the Same Issues**
 4 **Raised in the Instant Action.**

5 In July of 2024, Plaintiff, purporting to act on behalf of this Defendant, Ignite Brands,
 6 brought in a Canadian court claims against International Investments, Ltd., Gregory Gilpin-Payne,
 7 Scott Rohleder, Robin Rodriguez, Thomas Bunker, and Ralph Gilpin-Payne.³ Those claims, like
 8 the instant action, arise from Plaintiff's termination as Ignite Brand's CEO and his removal from
 9 its Board of Directors.⁴ Plaintiff then brought a second proceeding in Canada based on the same
 10 claims just months later,⁵ after the Canadian Court found that Plaintiff "purported to have initiated
 11 proceedings on behalf of the company, when he had no right or authority to do so."⁶ As the
 12 Honorable Justice Tammen of the Supreme Court of British Columbia described:

13 The litigation to date has a tortured history, which I will not even attempt to
 14 summarize, much less describe in detail. At its core, this is a dispute over control
 15 of the company, Ignite, which primarily sells vaping and related products, largely
 by using the social media celebrity status of [Plaintiff] as its marketing platform.⁷

16 **B. Despite the Pendency of the Canadian Proceedings, Plaintiff Filed the Instant Action**
 17 **in this Court.**

18 The Supreme Court of British Columbia has already grappled with the difficult task of
 19 "craft[ing] more surgical orders which will hopefully serve the broader interests of the company
 20 and permit it to conduct its corporate business in an orderly fashion"⁸ while adjudicating the
 21 remaining claims between the parties. Those efforts have been made appreciably more difficult for
 22 the Canadian Court because, "[u]nfortunately, in his efforts to regain his positions with Ignite and,
 23

24 ³ (See Ex. 1).

25 ⁴ (See generally Ex. 2).

26 ⁵ (See generally Exs. 3 & 4).

27 ⁶ (See Oral Reasons for Judgment in *Bilzerian v. Ignite International Brands, Ltd., et al.*, Vancouver
 Registry No. S-245663, attached as **Exhibit 6**, at ¶ 11).

28 ⁷ (See Ex. 6 at ¶ 3).

⁸ (See Ex. 6 at ¶ 7).

1 by extension, control of the company, [Plaintiff] and his original lawyers, *not* counsel who
 2 appeared before [Justice Tamm], have made a series of serious missteps which have led to
 3 [Plaintiff] either wittingly or unwittingly abusing the process of [the Canadian] court.”⁹

4 Plaintiff, unhappy with the results of the Canadian Proceedings, brought this action.
 5 Notably, Plaintiff’s allegations in this case are inconsistent with sworn statements he made in the
 6 Canadian Proceedings.¹⁰ Indeed, Plaintiff tacitly concedes that this action is brought to address the
 7 same claims and issues raised in the Canadian Proceedings, although he claims that Defendants
 8 “[a]ttempted to seize, through Canadian court proceedings, Dan’s Instagram account”¹¹—deftly
 9 avoiding the fact that ***Plaintiff*** was the one who initiated the Canadian Proceedings.¹²

10 **C. The Complaint Does Not Allege Ignite Brands’ Contacts with Nevada**

11 The Complaint avers that Ignite Brands is a Canadian corporation with its principal place
 12 of business in Texas.¹³ It does not allege any contacts with Nevada. Instead, the Complaint broadly
 13 asserts only that “Defendants purposefully availed themselves for doing business in the United
 14 States and are subject jurisdiction in any U.S. court.”¹⁴

15 **III.**

16 **ARGUMENT**

17 **A. Legal Standards for Dismissal Under Rule 12(b)(2), (3) and (6).**

18 **1. Rule 12(b)(2): Dismissal for lack of personal jurisdiction.**

19 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss a complaint
 20 for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). “To avoid dismissal, the plaintiff
 21 bears the burden of demonstrating that its allegations establish a prima facie showing of personal
 22 jurisdiction.” *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 602 (9th Cir.
 23 2018) (citing *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008)); *see also Tuazon v. R.J.*

24 ⁹ (Ex. 6 at ¶ 6).

25 ¹⁰ (See, Ex. 5).

26 ¹¹ (Compl. at ¶ 25, subpoint 5).

27 ¹² (See Exs. 1, 2, 3 & 4).

28 ¹³ (Compl. at ¶ 10).

¹⁴ (Compl. at ¶ 5).

1 *Reynolds Tobacco Co.*, 433 F.3d 1163, 1168 (9th Cir. 2006) (“A plaintiff bears the burden of
2 establishing personal jurisdiction.”).

3 A two-part analysis governs whether a court retains personal jurisdiction over a nonresident
4 defendant. “First, the exercise of jurisdiction must satisfy the requirements of the applicable state
5 long-arm statute.” *Chan v. Soc’y Exped’ns*, 39 F.3d 1398, 1404 (9th Cir. 1994). As “Nevada’s long-
6 arm statute, NRS 14.065, reaches the limits of due process set by the United States Constitution,”
7 the two prongs of the personal jurisdiction analysis are coterminous with one another. *Baker v.*
8 *Eighth Jud. Dist. Ct.*, 999 P.2d 1020, 1023 (Nev. 2000); *see also Walden v. Fiore*, 571 U.S. 277,
9 282–84 (2014). “Second, the exercise of jurisdiction must comport with federal due process.”
10 *Chan*, 39 F.3d at 1404–05. “Due process requires that nonresident defendants have certain
11 minimum contacts with the forum state so that the exercise of jurisdiction does not offend
12 traditional notions of fair play and substantial justice.” *Chan*, 39 F.3d at 1404–05 (citing *Int’l Shoe*
13 *v. Washington*, 326 U.S. 310, 316 (1945)).

14 Courts analyze this constitutional question with reference to two forms of jurisdiction:
15 general and specific. “A court may assert general jurisdiction over foreign (sister-state or foreign-
16 country) corporations to hear any and all claims against them when their affiliations with the State
17 are so ‘continuous and systematic’ as to render them essentially at home in the forum State.”
18 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int’l Shoe*,
19 326 U.S., at 317). Alternatively, “[i]n order for a court to have specific jurisdiction over a
20 defendant, ‘the defendant’s suit-related conduct must create a substantial connection with the
21 forum State.’” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1023 (9th Cir. 2017) (quoting
22 *Walden*, 571 U.S. 277 at)).

23 **2. Rule 12(b)(3): Dismissal for improper venue and/or *forum non conveniens*.**

24 Federal law prescribes the venue for civil actions. *See* 28 U.S.C. § 1391(b). Under
25 § 1391(b), venue is proper only in one of three places:

- 26 (1) a judicial district in which any defendant resides, if all defendants are residents
27 of the State in which the district is located;
- 28 (2) a judicial district in which a substantial part of the events or omissions giving
rise to the claim occurred, or a substantial part of property that is the subject of the
action is situated; or

1 (3) if there is no district in which an action may otherwise be brought as provided
 2 in this section, any judicial district in which any defendant is subject to the court's
 personal jurisdiction with respect to such action.

3 If an action is commenced in the improper venue, the district court can either (A) dismiss
 4 it or (B) transfer it to another district where it might have been brought. *See* 28 U.S.C. § 1406(a).
 5 Where venue is proper, the court can nonetheless transfer the case to another appropriate venue
 6 “in the interest of justice.” *Id.* § 1404(a). When determining whether venue is proper, the district
 7 court views disputed facts, draws all reasonable inferences, and resolves factual disputes in favor
 8 of the non-moving party. *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1138 (9th Cir. 2004).
 9 The district court is not, however, limited to the “four corners” of the pleadings—it can consider
 10 the existence of other facts. *See, e.g., Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir.
 11 1996) (analyzing a motion to dismiss for improper venue involving a forum selection clause).

12 The dismiss-or-transfer decision is left to the court’s discretion after “an individualized,
 13 case-by-case consideration of convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d
 14 495, 498 (9th Cir. 2000). The Ninth Circuit has provided factors that district courts may consider
 15 when deciding whether to transfer a case “in the interest of justice,” which include the following:

16 (1) the location where the relevant agreements were negotiated and executed, (2)
 17 the state that is most familiar with the governing law, (3) the plaintiff’s choice of
 18 forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating
 19 to the plaintiff’s cause of action in the chosen forum, (6) the differences in the costs
 20 of litigation in the two forums, (7) the availability of compulsory process to compel
 attendance of unwilling non-party witnesses, and (8) the ease of access to sources
 of proof.

21 *Id.* at 498–99.

22 However, transfer is limited to federal district courts; a court in the U.S. cannot transfer an
 23 action to a court in a foreign country. *See* 28 U.S.C. § 1404. Thus, under the doctrine of *forum non*
 24 *conveniens*, “[a] district court has discretion to decline to exercise jurisdiction in a case where
 25 litigation in a foreign forum would be more convenient for the parties.” *Lueck v. Sundstrand Corp.*,
 26 236 F.3d 1137, 1142 (9th Cir. 2001) (citation omitted); *see also Cheng v. Boeing Co.*, 708 F.2d
 27 1406, 1409 (9th Cir. 1983). Before dismissing an action on this ground, a court analyzes two
 28 factors: “(1) whether an adequate alternative forum exists, and (2) whether the balance of private

and public interest factors favors dismissal.” *Lueck*, 236 F.3d at 1142.

3. Rule 12(b)(6): Dismissal for failure to state a claim.

Rule 12(b)(6) motion tests the sufficiency of a complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). Rule 8(a) “demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Thus, a claim is insufficient and should be dismissed if it “lack[s] [] a cognizable legal theory” or there is an “absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A claimant must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This requires “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. It is inappropriate to assume that the claimant “can prove facts which it has not alleged or that the defendants have violated the ... laws in ways that have not been alleged.” *Assoc’d Gen. Cont’rs of Cal., Inc. v. Cal. State Council of Carpt’rs*, 459 U.S. 519, 526 (1983).

When determining whether a complaint states a claim, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, the court need not assume the truth of legal conclusions cast in the form of factual allegations. *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). Thus, a pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”).

Further, a court can dismiss a case under Rule 12(b)(6) when the allegations in a complaint are contradicted by matters properly subject to judicial notice. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010); Fed. R. Evid. 201(d) (“[a] court shall take judicial notice if requested by a party and supplied with the necessary information.”). An “adjudicative fact” may be judicially noticed if it is “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). For instance, courts may take judicial notice of public documents. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

B. The Court Does Not Have Personal Jurisdiction Over Ignite Brands.

1. Ignite Brands is not subject to general personal jurisdiction in Nevada.

As noted above, Plaintiff does not even attempt to allege general personal jurisdiction over Ignite Brands.

“A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011). As the Supreme Court has explained, “unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). Isolated trips to or transactions in a jurisdiction are likewise insufficient to establish the “continuous and systematic” presence in a jurisdiction required to assert general personal jurisdiction over an entity. *See, e.g., id.* at 416. The Court’s reasoning in *Helicopteros Nacionales* is instructive:

The one trip to Houston by Helicol’s chief executive officer for the purpose of negotiating the transportation-services contract with Consorcio/WSH cannot be described or regarded as a contact of a “continuous and systematic” nature ... and thus cannot support an assertion of in personam jurisdiction over Helicol by a Texas court. Similarly, Helicol’s acceptance from Consorcio/WSH of checks drawn on a Texas bank is of negligible significance for purposes of determining whether Helicol had sufficient contacts in Texas.

Id.

There are simply no facts alleged in this case to suggest that Ignite Brands is essentially “at home” in Nevada by virtue of “continuous and systematic” presence in and contacts with the state. To be sure, there are none. As Plaintiff alleges, Ignite Brands is a Canadian company with an office in Texas.

1 Ignite Brands simply does not have a continuous or systematic presence in Nevada that
 2 would subject it to general personal jurisdiction.¹⁵ After all, it does not manufacture its products in
 3 Nevada, have any officers or employees working on its behalf from Nevada, maintain any business
 4 records in Nevada, have a bank account in Nevada, hold annual or special meetings of its
 5 stockholders or directors in Nevada, or own any real property or have any leasehold interest in real
 6 property located in Nevada.¹⁶

7 **2. Ignite Brands is not subject to specific personal jurisdiction in Nevada.**

8 Plaintiff must demonstrate that Ignite Brands’s contacts with Nevada are sufficient to
 9 establish specific personal jurisdiction in the state “under a three-prong test”:

10 (1) The non-resident defendant must purposefully direct his activities or
 11 consummate some transaction with the forum or resident thereof; or perform some
 12 act by which he purposefully avails himself of the privilege of conducting activities
 13 in the forum, thereby invoking the benefits and protections of its laws; (2) the claim
 must be one which arises out of or relates to the defendant’s forum-related
 activities; and (3) the exercise of jurisdiction must comport with fair play and
 substantial justice, i.e. it must be reasonable.

14 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (quoting
 15 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)).

16 “[Plaintiff] bears the burden of satisfying the first two prongs. If [Plaintiff] does so, the
 17 burden then shifts to [Ignite Brands] to set forth a ‘compelling case’ that the exercise of jurisdiction
 18 would not be reasonable.” *Id.* (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990), then
 19 quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)). “[I]f the plaintiff fails at
 20 the first step, the jurisdictional inquiry ends and the case must be dismissed.” *Boschetto v. Hansing*,
 21 539 F.3d 1011, 1016 (9th Cir. 2008).

22 The first prong is determined by reference to “[t]he ‘effects’ test,” which “requires that ‘the
 23 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum
 24 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.’” *Mavrix*
 25 *Photo*, 647 F.3d at 1228 (quoting *Calder v. Jones*, 465 U.S. 783 (1984)). The *Calder* effects test is
 26 appropriate in tort and “tort-like” cases—which, as the Ninth Circuit has held, includes copyright

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 28 ¹⁵ (Rupy Dhadwar Decl. at ¶ 5(c)).

¹⁶ (Rupy Dhadwar Decl at ¶¶ 5(a)–(i)).

1 infringement claims. *See id.* (“Because Mavrix has alleged copyright infringement, a tort-like
2 cause of action, purposeful direction ‘is the proper analytical framework.’”).

3 Further, the Ninth Circuit has “discussed with approval a sliding scale analysis that looks
4 to how interactive an Internet website is for purposes of determining its jurisdictional effect.”
5 *Boschetto v. Hansing*, 539 F.3d 1011, 1018 (9th Cir. 2008) (citing *Cybersell, Inc. v. Cybersell, Inc.*,
6 130 F.3d 414, 419 (9th Cir. 1997)). Where a defendant has posted a website but “had done nothing
7 to encourage residents of the forum state to access its site,” the Ninth Circuit has found no personal
8 jurisdiction exists. *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002)
9 (discussing *Cybersell*). “Under the effects doctrine, ‘something more’ was required to indicate that
10 the defendant purposefully directed its activity in a substantial way to the forum state.” *Id.* This
11 analysis of a website comports with existing Supreme Court precedent on personal jurisdiction,
12 which explains that “a defendant’s awareness that the stream of commerce may or will sweep the
13 product into the forum State does not convert the mere act of placing the product into the stream
14 into an act purposefully directed toward the forum State.” *Asahi Metal Indus. Co. v. Sup’r Ct. of*
15 *Cal., Solano Cnty.*, 480 U.S. 102, 112 (1987).

16 Additionally, the use of a third-party website accessible in the forum is insufficient to
17 establish personal jurisdiction. For instance, in *Boschetto*, the plaintiff “attache[d] special
18 significance to the fact that the transaction was consummated via eBay, noting that the eBay listing
19 could have been viewed by anyone in California (or any other state for that matter) with Internet
20 access.” *Boschetto*, 539 F.3d at 1017–18. The Ninth Circuit disagreed, noting that the plaintiff
21 “[i]gnor[ed] the limited nature of the transaction at issue” and found, instead, that “the fact that
22 eBay was used as the conduit for this sale does not affect the jurisdictional outcome.” *Id.* at 1018.

23 Here, Plaintiff makes no allegations showing that Ignite Brands purposefully directed its
24 activities toward Nevada. The only allegation that comes close, but does not mention Ignite Brands
25 specifically, is that “the claim in this complaint relate to [Defendants’] maintenance and operation
26 of many websites and social media accounts that are interactive and fully accessible to residents
27 of this District.”¹⁷ The claim that the unspecified “website and social media accounts” maintained

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¹⁷ (Compl. at ¶ 5).

1 or operated by one or more of the Defendants are “fully accessible” in Nevada is, without more,
 2 insufficient as a matter of law to render Ignite Brands subject to personal jurisdiction in this
 3 District. *Compare, Asahi, Calder, Mavrix, Boschetto, Rio Properties, and Cybersell, supra.*

4 As a threshold matter, the existence of any unspecified accounts on unspecified social
 5 media platforms is immaterial, as a matter of law. Like the transaction consummated via eBay in
 6 *Boschetto*, those accounts (whatever they may be) do not impute personal jurisdiction over Ignite
 7 Brands. Further, Plaintiff does not allege that Ignite Brands owns or operates any of those
 8 unspecified accounts.

9 Further, as to the unspecified “websites,” Plaintiff does not (and cannot) allege any action
 10 by Ignite Brands or a single other defendant to “encourage” Nevada residents to access them.¹⁸
 11 There is no description of how or why these unspecified websites are supposedly “interactive,” let
 12 alone how that purported interactivity rises to the level of expressly aiming an intentional act to
 13 the forum state, as required by the *Calder* effects test. *Compare Mavrix, supra.*

14 Because Plaintiff fails the first two prongs, this Court need not get to the third prong of the
 15 specific jurisdiction test, but it entails a seven-factor balancing test, under which a court considers:

16 (1) the extent of the defendant’s purposeful interjection into the forum state’s
 17 affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of
 18 conflict with the sovereignty of the defendants’ state; (4) the forum state’s interest
 19 in adjudicating the dispute; (5) the most efficient judicial resolution of the
 controversy; (6) the importance of the forum to the plaintiff’s interest in convenient
 and effective relief; and (7) the existence of an alternative forum.

20 *Menken v. Emm*, 503 F.3d 1050, 1060 (9th Cir. 2007)

21 In the Complaint, Plaintiff merely alleges that “Defendants purposefully availed
 22 themselves for doing business in the Unites States and are subject to jurisdiction in any U.S.
 23 court.”¹⁹ In so arguing, he attempts to invoke “Federal Rule of Civil Procedure 4(k)(2), known as
 24 the federal long-arm statute.” *Best Odds Corp. v. iBus Media Ltd.*, No. 2:13-CV-02008-RCJ, 2014
 25 WL 2527145, at *3 (D. Nev. June 4, 2014), *aff’d*, 655 F. App’x 582 (9th Cir. 2016). Plaintiff,
 26 however, wholly ignores the three requirements for Rule 4(k)(2) jurisdiction: “(1) plaintiff’s cause
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28 ¹⁸ (Rupy Dhadwar Decl. at ¶5).

¹⁹ (Compl. at ¶ 4).

1 of action arises under federal law; (2) the defendant **is not subject to personal jurisdiction in any**
 2 **state court of general jurisdiction**; and (3) the exercise of personal jurisdiction over the defendant
 3 would comport with due process.” *Id.* (emphasis added) (citing *Glencore Grain Rotterdam B.V. v.*
 4 *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1126 (9th Cir. 2002)).

5 Plaintiff alleges that Ignite Brands “is a is a Canadian corporation with a principal place of
 6 business in the State of Texas,”²⁰ tacitly conceding that there is at least one other state in which
 7 Ignite Brands would likely be subject to personal jurisdiction. Thus, the face of Plaintiff’s own
 8 pleading bars him from arguing, and bars this Court from employing, Rule 4(k)(2) jurisdiction in
 9 this case. Without Rule 4(k)(2) jurisdiction, Plaintiff’s claims must be dismissed.

10 In any event, the seven-factor test for evaluating whether assertion of personal jurisdiction
 11 over Ignite Brands comports with fair play and substantial justice weighs heavily in favor of
 12 dismissing this action. For the reasons set forth in detail above, Ignite Brands’s “purposeful
 13 interjection” into Nevada is not supported. Therefore, the first of the factors clearly cuts against
 14 personal jurisdiction in this Court.

15 For the reasons set forth at length below, the second, third, fifth, sixth, and seventh factors
 16 weigh against exercising personal jurisdiction because this Court can and should defer to the
 17 Canadian Proceedings, where the parties are already adjudicating the claims at issue in this action.
 18 It conflicts with the sovereignty of the Canadian Proceedings (factor three), which has a vested
 19 interest in adjudicating the claims that ***Plaintiff brought*** in that forum (factors four and six).²¹
 20 Allowing Plaintiff to forum shop after electing to bring his claims in Canada would waste both
 21 public and private resources and subject the parties to the risk of inconsistent judgments (factor
 22 five).²²

23 . . .

24 . . .

25 . . .

27 ²⁰ (Compl. at ¶ 10).

28 ²¹ (*See* Rupy Dhadwar Decl. . at ¶¶ 6-11).

²² (*See, Id.*).

C. Dismissal is Appropriate Because this District is an Improper or, at the Very Least, Inconvenient Forum.

1. The District of Nevada is an improper venue under 28 U.S.C. § 1391(b).

Federal law prescribes—and proscribes—where a plaintiff may file an action. *See* 28 U.S.C. § 1391. Courts can and should dismiss cases that are brought in the “wrong” or “improper” venue. As the Supreme Court has explained:

This question—whether venue is “wrong” or “improper”—is generally governed by 28 U.S.C. § 1391. That provision states that “[e]xcept as otherwise provided by law ... this section *shall* govern the venue of *all civil actions* brought in district courts of the United States.” § 1391(a)(1) (emphasis added). It further provides that “[a] civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” § 1391(b). When venue is challenged, the court must determine whether the case falls within one of the three categories set out in § 1391(b). If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under § 1406(a).

Atl. Marine Const. Co. v. U.S. Dist. Ct., W. Dist. of Tex., 571 U.S. 49, 55–56 (2013).

Here, § 1391(b)(1) is plainly inapplicable, as **none** of the Defendants are residents of Nevada. Section 1391(b)(3) is likewise inapplicable for the same reason that Plaintiff’s attempt at Rule 4(k)(2) jurisdiction fails—there are other venues in which Ignite Brands is arguably subject to personal jurisdiction, including its averred domicile (Texas). Thus, the only remaining basis for venue in this Court is § 1391(b)(2): “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” Plaintiff’s claims fail under this prong, too.

The claims here do not arise out of any property located in or actions taken in Nevada. Rather, Plaintiff’s claims arise from his alleged termination as Ignite Brand’s CEO, his removal from Ignite Brand’s Board of Directors,²³ and Ignite Brand’s alleged operation of unspecified “websites” and social media accounts, including a single identified “Instagram account called

²³ (See Compl. at ¶¶ 22–23).

1 @ignite.intl.”²⁴ None of that conduct is alleged to have occurred in Nevada.

2 Accordingly, 28 U.S.C. § 1391 should be the beginning and the end of the inquiry. Venue
3 is improper in this Court. Plaintiff’s claims should be dismissed.

4 **2. The Court should dismiss this action in favor of the pending Canadian**
5 **Proceedings because the District of Nevada is an inconvenient forum.**

6 The Court should dismiss Plaintiff’s claims under the doctrine of *forum non conveniens*,
7 because “litigation in a foreign forum would be more convenient for the parties.” *Lueck*, 236 F.3d
8 at 1142 (citation omitted); *see also Cheng*, 708 F.2d at 1409. Both of the *forum non conveniens*
9 factors—“(1) whether an adequate alternative forum exists, and (2) whether the balance of private
10 and public interest factors favors dismissal”—are satisfied here. *Lueck*, 236 F.3d at 1142.

11 “The Supreme Court has held that an alternative forum ordinarily exists when the defendant
12 is amenable to service of process in the foreign country.” *Lueck*, 236 F.3d at 1143. An alternative
13 forum is not inadequate simply because it does not have all the same procedural trappings as the
14 American judiciary; nor does a forum become inadequate simply because the law of the foreign
15 jurisdiction is less favorable to the plaintiff than the corresponding laws of the United States. *See*,
16 *e.g.*, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 236 (1981); *Lockman Found. v. Evangelical All.*
17 *Mission*, 930 F.2d 764, 768–69 (9th Cir. 1991); *McNeil v. Stanley Works*, 33 F. App’x 322, 325 (9th
18 Cir. 2002). As the United States Supreme Court explained, “the possibility of an unfavorable
19 change in law” is not grounds to deny dismissal for *forum non conveniens*. *Piper Aircraft Co.*, 454
20 U.S. at 236. For instance, the Ninth Circuit held Japan was an adequate alternative forum in
21 *Lockman Foundation* even though (A) the Japanese judicial system did not provide for jury trials,
22 as the plaintiff had requested, and (B) Japanese law may not recognize the plaintiff’s RICO or
23 Lanham Act claims. *See Lockman Found.*, 930 F.2d at 768–69 (collecting cases).

24 Consistent with those principles, the Ninth Circuit in *McNeil v. Stanley Works* found that
25 Canada is an adequate alternative forum even if “the rights and legal protections provided by
26 Canadian law may be less extensive than those afforded by United States law.” *McNeil*, 33 F.
27 App’x at 325. Of particular relevance here, the *McNeil* court noted that Canada was an adequate

28 ²⁴ (See Compl. at ¶¶ 24–25).

1 alternative forum after “[defendant] stipulated that it would submit to jurisdiction in Canada should
 2 [plaintiff] bring his claims as crossclaims **in the Canadian litigation already pending between**
 3 **the parties**, or in a separate action.” *Id.* (emphasis added). Other district courts in the Ninth Circuit
 4 have done so, as well. *See, e.g., Etaliq, Inc. v. Cisco Sys., Inc.*, No. CV-113672 GAF (FFMx), 2011
 5 WL 13220445, at *8 (C.D. Cal. July 20, 2011) (granting a motion to dismiss for *forum non*
 6 *conveniens* after “conclude[ing] that Canada is an available and adequate alternative forum”).

7 There is undoubtedly an adequate alternative forum available to Plaintiff. He himself
 8 initiated the Canadian Proceedings to vindicate his rights arising from his purportedly wrongful
 9 termination as CEO and his removal as a Director. Only after Plaintiff was dissatisfied with the
 10 decisions of the Supreme Court of British Columbia in the Canadian Proceedings did he bring the
 11 instant action in this Court. Plaintiff is plainly seeking to collaterally attack the results in the
 12 Canadian Proceedings—and unduly burden the defendants in the process. This amounts to blatant
 13 forum shopping.

14 In fact, the Canadian Proceedings continued to go against Plaintiff over recent months.
 15 Despite the fact Plaintiff has argued that the Canadian Proceedings have “no legal relevance to the
 16 claims of this case,” those proceedings deal explicitly with Plaintiff’s name, likeness, and image,
 17 including on the Instagram account as alleged in his Complaint here.²⁵ The Canadian court entered
 18 order against Plaintiff, entered February 13, 2025, resulting from a contempt hearing on January
 19 17, 2025. The order holds Plaintiff here, Dan Bilzerian, in contempt of court for, among other
 20 things, the following:

21 2. Mr. Bilzerian is declared to be in contempt of court for failing to comply with
 22 paragraph 1 of the order of Justice Tammien, pronounced on October 30, 2024,
 23 which required Mr. Bilzerian to return control of and grant access to Ignite's
 24 Instagram account "@Ignite" to Ignite, including by providing all usernames and
 passwords and approving any necessary account changes to effect the transfer,
 within three days of the date of the order;²⁶

25 This order confirms central importance of the Ignite Instagram account in the Canadian
 26 Proceedings, as well as the action here.

27 ²⁵ (See Compl. at ¶25).

28 ²⁶ See, Order Made After Application (Justice Latimer) in *Bilzarian v. Ignite International Brands, Ltd., et al.*, Vancouver Registry No. S-245663, dated February 13, 2025. **Exhibit 7.**

Furthermore, on March 27, 2025, the judge in the Canadian Proceeding, Justice Latimer, enter injunctive relief against the Plaintiff here stating:

THIS COURT ORDERS that:

1. Dan Bilzerian is prohibited from directly or indirectly competing with Ignite until a final order is made in this action, including refraining from:

- a. contacting Ignite's manufacturers or distributors, or retailers of vape products;
- b. lending his name or likeness to the marketing of vape products other than Ignite's products;
- c. permitting SAVH LLC to manufacture, distribute, market or sell or transfer vape products;
- d. using or distributing images paid for or used by Ignite; and
- e. promoting vape products other than those marketed by Ignite.²⁷

Thus, the Canadian court ruled specifically on the central allegations of Plaintiff's Complaint found in Paragraph 25 and elsewhere. In doing so, the Canadian court prohibited Plaintiff from lending his own image and likeness to any vape products *except for Ignite's*.

On these facts, the public-and-private-interest factor is also met. The evidence to be produced, facts to be presented, witnesses to be called, and arguments to be made in the pending Canadian Proceedings are the same those to be produced, presented, called, and made in this action. *Plaintiff* elected to bring his claims in the Canadian Court in the first instance. Only now that he is unhappy with the decisions against him does he seek to burden the Defendants with defending against litigation in this District, with which Ignite Brands otherwise has no sufficient contacts. Just as it fails to comport with fair play and substantial justice to assert jurisdiction over parties that have no sufficient contacts with Nevada, it does not serve public or private interests to subject the Defendants to simultaneous and duplicative actions in two separate forums. This action should be dismissed.

D. Dismissal for Failure to State a Claim Against Ignite Brands.

As detailed above, the Court should dismiss this action against Ignite Brands pursuant to Rule 12(b)(2) for lack of personal jurisdiction and/or Rule 12(b)(3) for improper venue. If the Court were to somehow deny relief on those grounds, however, it would see that the

²⁷ Order Made After Application (Justice Latimer) in *Bilzarian v. Ignite International Brands, Ltd., et al.*, Vancouver Registry No. S-245663, dated March 17, 2025. **Exhibit 8.**

1 Complaint also fails to allege any claim for which relief could be granted against Ignite
2 Brands.

3 **1. None of Plaintiff’s vague, group-pled claims allege conduct by Ignite Brands.**

4 Plaintiff’s claims fail as they are all impermissibly “group pled.” Federal courts, including
5 the Ninth Circuit, disapprove of summarily grouping defendants together so as to make “‘everyone
6 did everything’ allegations.” *Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011). “[T]he well-
7 established law in this circuit that so-called ‘shotgun pleadings’ do not satisfy Rule 8’s notice
8 requirement.” *Resh, Inc. v. Skimlite Mfg. Inc.*, 666 F. Supp. 3d 1054, 1059 (N.D. Cal. 2023).
9 “Plaintiff’s failure to parse out which allegations are levied against which Defendants ‘makes it
10 exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiff[’s]
11 allegations.’” *Id.* (citation omitted). “[B]y lumping all [Defendants] together, Plaintiff[] ha[s] not
12 stated sufficient facts to state a claim for relief that is plausible against *one* Defendant.” *In re*
13 *iPhone App. Litig.*, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20, 2011) (emphasis in original); *see*
14 *also Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1103 (E.D. Cal. 2014) (“Specific
15 identification of the parties to the activities alleged by the plaintiffs is required in this action to
16 enable the defendant to plead intelligently.”) Thus, courts regularly dismiss claims raised in
17 shotgun or that “use impermissible ‘group pleading’” to categorize “individual defendants into
18 broad groups” without “plausibly alleg[ing] how any particular defendant’s behavior was
19 unlawful.” *See, e.g., Dana v. Idaho Dep’t of Corr.*, No. 23-35047, 2024 WL 2862581, at *1 (9th
20 Cir. June 6, 2024).

21 Here, Ignite Brands is mentioned in only one paragraph of the Complaint, alleging
22 Defendant Ignite International Brands, Ltd. (‘Ignite Brands’) is a Canadian corporation domiciled.
23 It further alleges, upon information and belief, Ignite Brands, together with Ignite, markets Ignite’s
24 products and is a licensor of Ignite’s intellectual property rights.²⁸ Nowhere else does Plaintiff
25 reference Ignite Brands specifically. Instead, the entirety of Plaintiff’s complaint is a shotgun
26 pleading, with exclusively group-pled claims that make it impossible to determine in what, if any,
27 misconduct ***Ignite Brands*** is alleged to have engaged. On these facts—or, rather, lack thereof—

28 ²⁸ (Compl. at ¶ 10).

1 Plaintiff's Complaint against Ignite Brands must be dismissed.

2 **2. Each of Plaintiff's claims is otherwise fatally defective.**

3 ***i. Misappropriation of statutory and common law right of publicity.***

4 "The elements of a claim of misappropriation of the right of publicity are '(1) the
5 defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to
6 defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury.'" *Sarver v. Chartier*, 813 F.3d 891, 903 (9th Cir. 2016). However, the Ninth Circuit has
7 acknowledged that many statutory or common law right of publicity claims are preempted by the
8 federal Copyright Act. *See generally Laws v. Sony Music Ent., Inc.*, 448 F.3d 1134 (9th Cir. 2006).
9 To avoid preemption, a right of publicity claim must "not concern the subject matter of copyright"
10 while "contain[ing] qualitatively different elements than those contained in a copyright
11 infringement suit." *Id.* at 1145.

12
13 No one, including Ignite Brands, can determine from these averments how Plaintiff's name
14 and/ or likeness are being appropriated by any of the Defendants, let alone by Ignite Brands in
15 particular. Nor can one distinguish between Plaintiff's common law publicity assertions and those
16 he claims as copyrighted.

17 Moreover, as with the other claims one cannot determine what Ignite Brands is alleged to
18 have done. It must be noted that the Complaint alleges Plaintiff directed his purported November
19 4, 2024, "demand to cease and desist from using his name and likeness and otherwise exploiting
20 his intellectual property rights" only to Ignite International and not to Ignite Brands.²⁹ Taking the
21 Complaint at face value, as the Court must, it fails to state a claim for relief against Ignite Brands
22 in the First Claim for Relief.

23 ***ii. Unfair competition and deceptive trade practices.***

24 Under Nevada's Deceptive Trade Practices Act ("DTPA"), a defendant is liable if it:

25 Knowingly passes off goods or services for sale or lease as those of another
26 person ... [u]ses deceptive representations or designations of geographic origin in
27 connection with goods or services for sale or lease ... makes a false representation
28 as to the characteristics, ingredients, uses, benefits, alterations or quantities of
goods or services for sale or lease or a false representation as to the sponsorship,

²⁹ (Compl. at ¶ 31).

1 approval, status, affiliation, or connection of a person therewith ... [or] [r]epresents
2 that goods or services for sale or lease are of a particular standard, quality or grade,
3 or that such goods are of a particular style or model, if he or she knows or should
know that they are of another standard, quality, grade, style or model.

4 Nev. Rev. Stat. § 598.0915(1), (4), (5), & (7); *see also* *BBK Tobacco & Foods, LLP v. Aims Grp.*
5 *USA Corp.*, 723 F. Supp. 3d 973, 986 (D. Nev. 2024).

6 The Complaint's vague allegations fail to state a discernable connection between any of
7 the Defendants and this statute. Again, the claim makes no specific allegation against Ignite
8 Brands. The only averments germane to this claim assert that Ignite Brands, and no one else, was
9 allegedly using Plaintiff's name, likeness and otherwise undescribed intellectual property rights in
10 some unspecified manner. Again, taking the Complaint at face value, as the Court must, it fails to
11 state a claim for relief against Ignite Brands on the Second Claim for Relief.

12 ***iii. False designations of origin under the Lanham Act, 15 U.S.C. § 1125(a).***

13 To prevail on a claim of false association or false designation of origin, a plaintiff must
14 plead and prove the following elements:

15 (1) defendant uses a designation (any word, term, name, device, or any combination
16 thereof) or false designation of origin; (2) the use was in interstate commerce; (3)
17 the use was in connection with goods or services; (4) the designation or false
18 designation is likely to cause confusion, mistake, or deception as to (a) the
19 affiliation, connection, or association of defendant with another person, or (b) as to
the origin, sponsorship, or approval of defendant's goods, services, or commercial
activities by another person; and (5) the plaintiff has been or is likely to be damaged
by these acts.

20 *BBK Tobacco & Foods*, 723 F. Supp. 3d at 984 (quoting *United Tactical Sys., LLC v. Real Action*
21 *Paintball, Inc.*, 143 F. Supp. 3d 982, 1015 (N.D. Cal. 2015)).

22 Concerning this Third Claim for Relief, Plaintiff generally avers that the Defendants used
23 his "photograph, likeness, and persona" in promoting Brands after he was removed as the CEO of
24 that company and that they did so to enhance the goodwill of the Defendants. Two substantial
25 flaws in this claim become immediately apparent.

26 First, Plaintiff fails to provide even one example where a word, term, name, device, or
27 combination that was used in violation of 15 U.S.C. § 1125(a) after his alleged termination as CEO
28

1 on December 21, 2023. (Plaintiff remained on the Ignite International board until June 2024.)³⁰

2 Second, Plaintiff fails to allege that Ignite Brands used his “photograph, likeness, and
3 persona.”

4 The general and vague averments in the Complaint alone do not state a claim for violation
5 of 15 U.S.C. § 1125(a), and the claim must be dismissed.

6 ***iv. Trademark infringement under the Lanham Act, 15 U.S.C. § 1125(c).***

7 To prevail on a trademark infringement claim, a plaintiff must show: “(1) it has a valid,
8 protectable mark; and (2) the defendant’s use of the mark is likely to cause consumer confusion.”
9 *OTR Wheel Eng’g, Inc. v. W. Worldwide Servs., Inc.*, 897 F.3d 1008, 1022 (9th Cir. 2018). However,
10 15 U.S.C. § 1125(c) specifically addresses dilution by blurring or dilution of a trademark by
11 tarnishment. It allows the remedy of an injunction the following circumstances:

12 Subject to the principles of equity, the owner of a famous mark that is distinctive,
13 inherently or through acquired distinctiveness, shall be entitled to an injunction
14 against another person who, at any time after the owner’s mark has become famous,
15 commences use of a mark or trade name in commerce that is likely to cause dilution
16 by blurring or dilution by tarnishment of the famous mark, regardless of the
17 presence or absence of actual or likely confusion, of competition, or of actual
18 economic injury.

19 This section, on its face, requires the use of a mark so similar to a Plaintiff’s famous trade
20 or service mark that will cause “cause dilution by blurring or dilution by tarnishment of the famous
21 mark.” Plaintiff does not plead either blurring or tarnishment in the Complaint, let alone attribute
22 it to Ignite Brands. The Fourth Claim for Relief must also be dismissed pursuant to Rule 12(b)(6).

23 ***v. Accounting.***

24 “An accounting is an equitable remedy, not an independent cause of action.” *W. Nev. Supply*
25 *Co. Profit-Sharing Plan & Tr. v. Aneesard Mgmt., LLC*, No. 3:09–CV–00737–ECR–VPC, 2011
26 WL 1118683, at *6 (D. Nev. Mar. 24, 2011) (citing *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 478
27 (1962)). “The necessary prerequisite to the right to maintain a suit for an equitable accounting, like
28 all other equitable remedies, is ... the absence of an adequate remedy at law.” *Dairy Queen*, 369
U.S. at 478. *See also Douglas Coder & Linda Coder Fam. LLLP v. RNO Exhibitions, LLC*, No.

³⁰ (Compl. at ¶ 23).

3:19-CV-00520-MMD-CLB, 2021 WL 1234500, at *1 (D. Nev. Apr. 1, 2021) (“[A]n accounting is more of a remedy than a claim.”); *Whittum v. Educ. Credit Mgmt. Corp.*, No. 2:18-CV-01495-JAD-DJA, 2020 WL 3621342, at *2 n.13 (D. Nev. July 2, 2020) (“Whittum acknowledges that her fifth ‘cause of action’ for declaratory relief and accounting is simply a prayer for those equitable remedies.”); *Nascimento v. Wells Fargo Bank, NA*, No. 2:11-CV-1049 JCM GWF, 2013 WL 6579575, at *7 (D. Nev. Dec. 13, 2013), *dismissed* (July 8, 2013) (“Plaintiff’s last claim for relief seeks accounting and declaratory relief. These are equitable remedies and not independent causes of action.”).

As accounting does not constitute a claim for relief, but only a remedy, the Fifth Claim fails.

vi. Unjust enrichment.

Under Nevada law, “[u]njust enrichment has three elements: [1] ‘the plaintiff confers a benefit on the defendant, [2] the defendant appreciates such benefit, and [3] there is acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof.’” *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev. 96, 101, 482 P.3d 683, 688 (2021) (citation omitted).

The averments of the Complaint do not allege the direct relationship between Plaintiff and Ignite Brands by which Plaintiff could have conferred a benefit upon Ignite Brands. Thus, the cause of action fails to meet all three elements for a claim of unjust enrichment, and it must be dismissed pursuant to Rule 12(b)(6).

vii. Intentional interference with prospective economic advantage.

Plaintiff’s Seventh Claim for Relief fails on its face. To prevail on an intentional interference with prospective economic advantage claim under Nevada law, Plaintiff must plead and prove five elements:

- (1) A prospective contractual relationship between the plaintiff and a third party;
- (2) The defendant’s knowledge of this prospective relationship;
- (3) The intent to harm the plaintiff by preventing the relationship;
- (4) The absence of privilege or justification by the defendant; and
- (5) Actual harm to the plaintiff as a result of the defendant’s conduct.

Consol. Generator-Nev., Inc. v. Cummins Engine Co., 114 Nev. 1304, 1311, 971 P.2d 1251, 1255

(1998) (quoting *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987)).

Like the Fifth Claim for Relief, the Sixth Claim for Relief of Plaintiff's Complaint fails to properly allege any of the required elements. It does not identify any prospective relationship between Plaintiff and any third party. As such, it cannot allege any Defendant's knowledge of such relationship. The claim also fails to allege intent on the part of Ignite Brands to harm Plaintiff by preventing some undisclosed prospective relationship, the absence of privilege and justification are not averred, and only a conclusory statement of damage is asserted.

Furthermore, the recent ruling the Canadian Proceedings calls the very notion of Plaintiff's competition with Ignite Brands into question. Again, Justice Latimer enjoined Plaintiff just two weeks ago, as follows:

THIS COURT ORDERS that:

1. Dan Bilzerian is prohibited from directly or indirectly competing with Ignite until a final order is made in this action, including refraining from:
 - a. contacting Ignite's manufacturers or distributors, or retailers of vape products;
 - b. lending his name or likeness to the marketing of vape products other than Ignite's products;
 - c. permitting SAVH LLC to manufacture, distribute, market or sell or transfer vape products;
 - d. using or distributing images paid for or used by Ignite; and
 - e. promoting vape products other than those marketed by Ignite.

See, Ex. 8.

Once again, this cause of action fails to allege a claim for which relief can be granted by this Court and it must be dismissed as to Ignite Brands.

viii. Declaratory relief.

The Eighth Claim for Relief is fatally defective as it is not a standalone cause of action and, under longstanding federal law, the Court should decline to issue a declaration that, as shown here, would not be helpful in resolving the dispute between the parties. Pursuant to the Declaratory Judgment Act, the court has the authority to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). In other words, the Declaratory Judgment Act allows federal courts to provide declaratory relief as a ***remedy***—declaratory relief is not, itself, an independently actionable claim

1 in federal court. *See, e.g., Villa v. Silver State Fin. Servs., Inc.*, No. 2:10-CV-02024-LDG, 2011
 2 WL 1979868, at *10 (D. Nev. May 20, 2011). Even though the Declaratory Judgment Act “gave
 3 the federal courts **competence** to make a declaration of rights, it **did not impose a duty** to do so.”
 4 *Pub. Affairs Assocs. v. Rickover*, 369 U.S. 111, 112, (1962) (emphasis added). Consistent with
 5 declaratory relief remedial nature, the Declaratory Judgment Act does not create an independent
 6 basis for jurisdiction; rather, the party seeking declaratory relief must establish a “case of actual
 7 controversy.” *Skelly Oil Co. v. Phillips Petro. Co.*, 339 U.S. 667, 671–72 (1950). *See also* 28
 8 U.S.C. § 2201(a) (“In a case of actual controversy within its jurisdiction”); *Principal Life Ins.*
 9 *Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005) (The court “must first inquire whether there is
 10 an actual case or controversy within its jurisdiction.”).

11 “If the suit passes constitutional and statutory muster, the district court must also be
 12 satisfied that entertaining the action is appropriate.” *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d
 13 1220, 1223 (9th Cir. 1998). “It is well settled, however, that a declaratory judgment may be refused
 14 where it would serve no useful purpose” *McGraw-Edison Co. v. Preformed Line Prods. Co.*,
 15 362 F.2d 339, 343 (9th Cir. 1966). Declaratory relief does not serve a useful purpose when “it is
 16 being sought merely to determine issues which are involved in a case already pending and can be
 17 properly disposed of therein” *Id.* Thus, “a court may decline to hear a claim for declaratory
 18 relief if adjudication of the issues raised in other claims would fully and adequately determine all
 19 matters actually in controversy between the parties.” *Philips Med. Cap., LLC v. Med. Insights*
 20 *Diags. Ctrs., Inc.*, 471 F. Supp. 2d 1035, 1048 (N.D. Cal. 2007).

21 The court “must decide whether to exercise its jurisdiction by analyzing the factors set out
 22 in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942), and its progeny.” *Robinson*, 394 F.3d at 669.
 23 These factors include: (1) avoiding needless determination of state laws; (2) discouraging litigants
 24 from filing declaratory actions as a means of forum shopping; and (3) avoiding duplicative
 25 litigation. *See, e.g., Robinson*, 394 F.3d at 672; *Dizol*, 133 F.3d at 1225; *Cont’l Cas. Co. v. Robsac*
 26 *Indus.*, 947 F.2d 1367, 1371–73 (9th Cir. 1991). “This determination is discretionary, for the
 27 Declaratory Judgment Act is ‘deliberately cast in terms of permissive, rather than mandatory,
 28 authority.’” *Dizol*, 133 F.3d at 1223 (quoting *Public Serv. Comm’n of Utah v. Wycoff Co.*, 344

1 U.S. 237, 250 (1952) (Reed, J., concurring)).

2 Here, the Court should construe Plaintiff’s declaratory relief “claim” as, at most, a prayer
3 for relief. The Plaintiff has not pleaded sufficient facts to establish the helpfulness of—let alone
4 his entitlement to—a declaration from this Court. What Plaintiff *does* plead proves this Court
5 should decline to exercise jurisdiction over the declaratory relief claim for two reasons. First,
6 declaratory relief will not be helpful in this case as it is being sought merely to determine issues
7 which are involved in a case already pending (i.e., the Canadian Proceedings) and can be properly
8 disposed of therein. *Compare McGraw-Edison Co., supra*. Second, the *Brillhart* factors cut against
9 Plaintiff because his declaratory relief claim is transparently an attempt to forum shop—which this
10 Court should discourage, not reward. *Compare Robinson, supra*. Accordingly, the Court should
11 dismiss the Eighth Claim for Relief.

12 ***ix. Copyright infringement.***

13 Plaintiff’s Ninth Claim for Relief also fails on the face of the Complaint. Federal law
14 unambiguously provides that “no civil action for infringement of the copyright in any United States
15 work shall be instituted until preregistration or registration of the copyright claim has been made
16 in accordance with this title.” 17 U.S.C. § 411(a). The United States Supreme Court has confirmed
17 this express statutory requirement: “Before pursuing an infringement claim in court, however, a
18 copyright claimant generally must comply with § 411(a)’s requirement that ‘registration of the
19 copyright claim has been made.’” *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586
20 U.S. 296, 301 (2019) (citing 17 U.S.C. § 411(a)). “Compliance with the registration requirements
21 of 17 U.S.C. § 411(a) is not a condition of copyright protection **but is a prerequisite to suing for**
22 **infringement.**” *Ambrosetti v. Oregon Cath. Press*, 458 F. Supp. 3d 1013, 1016 (N.D. Ind. 2020)
23 (emphasis added).

24 Plaintiff’s copyright infringement also fails as a factual matter. The Complaint specifically
25 avers only that (A) various unspecified pictures and videos appear on Ignite’s websites and social
26 media platforms, and (B) certain photographs are “copyrighted.”³¹ Plaintiff does not allege any
27 copyright infringement specifically by Ignite Brands, does not identify which photos are

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³¹ (Compl. at ¶ 24).

1 copyrighted, and does not specify who holds the purported copyright.

2 Moreover, the cause of action fails to state a claim for relief as a matter of law. Plaintiff
3 fails to aver that he federally registered his purported copyright. Instead, Plaintiff alleges that he
4 owns a copyright as the term is used in 17 U.S.C. § 501, and that he owns the exclusive right to
5 derivative works as defined in 17 U.S.C. § 106 (1)–(3).³² This is insufficient as a matter of law
6 because, as set forth above, registration is a *prerequisite* to filing an action pursuant to 17 U.S.C.
7 § 501, *et seq.* Accordingly, this claim must be dismissed.

8 IV.

9 CONCLUSION

10 Ignite Brands and Plaintiff are already embroiled in litigation in Canada to address the
11 issues raised in the instant Complaint. Plaintiff re-raised these issues in this jurisdiction only after
12 receiving several adverse rulings and determinations in the Canadian Proceedings. Unfortunately
13 for Plaintiff, this Court does not have personal jurisdiction—whether general or specific—over
14 Ignite Brands. Further still, this Court is an improper and inconvenient forum. All of these defects
15 warrant dismissal of this action so that the claims can be fully and finally adjudicated in Canada.
16 Even if this Court is inclined to find, retain, and exercise jurisdiction over this case and personal
17 jurisdiction over Ignite Brands, Plaintiff’s Complaint fails to state a claim against Ignite Brands
18 upon which relief can be granted. The Court should grant the Motion and either dismiss this case
19 or, at the very least, dismiss all claims against Ignite Brands.

20 DATED April 16, 2025.

21 **GARMAN TURNER GORDON LLP**

22 /s/ Eric R. Olsen

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³² (Compl. at ¶¶ 83–84).

CERTIFICATE OF SERVICE

The undersigned, an employee of Garman Turner Gordon LLP, hereby certifies that on the 16th day of April 2025, he caused a copy of the foregoing **IGNITE INTERNATIONAL BRANDS, LTD.'S MOTION TO DISMISS** to be served electronically to all parties of interest through the Court's CM/ECF system as follows:

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